

DISABLED SURFMEN, ETC., LIFE-SAVING SERVICE.

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LETTER

FROM

THE SECRETARY OF THE TREASURY.

TRANSMITTING,

IN RESPONSE TO RESOLUTION OF THE SENATE OF DECEMBER 6, 1900, COPY OF THE DECISION OF THE COMPTROLLER OF THE TREASURY, CONCERNING ONE YEAR'S EXTRA PAY FOR DISABLED SURFMEN OF THE LIFE-SAVING SERVICE.

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DECEMBER 19, 1900.—Referred to the Committee on Commerce and ordered to be printed.

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TREASURY DEPARTMENT,  
OFFICE OF THE SECRETARY,  
*Washington, December 18, 1900.*

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate, viz:

*Resolved*, That the Secretary of the Treasury be directed to transmit to the Senate a copy of the decision of the Comptroller of the Treasury holding that applications of members of the Life-Saving Service for the benefit of section 7 of the act of May 4, 1882, allowing disabled surfmen, etc., one year's extra pay, must be made before the expiration of the term of enlistment of such surfmen, etc., together with a list of such applications as have been denied under said decision.

In compliance therewith, I have the honor to transmit copy of decision of the Comptroller of the Treasury, and copy of a letter of the Auditor for the Treasury, giving a list of the claims rejected and disallowed, under the decision of the Comptroller.

Respectfully,

L. J. GAGE, *Secretary.*

THE PRESIDENT OF THE UNITED STATES SENATE.

## CLAIM OF WARREN ADKINS.

TREASURY DEPARTMENT,  
OFFICE OF COMPTROLLER OF THE TREASURY,  
*May 28, 1898.*

The Secretary of the Treasury has requested the revision of the claim of Warren Adkins, formerly a surfman at Cape Henlopen Life-Saving Station, Fifth district, for the benefit provided by section 7 of the act of May 4, 1882 (22 Stat., 57), from August 1, 1895, to January 15, 1896, which has been determined in his favor by the Auditor for the Treasury Department for \$329.03, per certificate No. 14439.

The records of this Department show that the claimant enlisted in the Life-Saving Service December 1, 1891, for one year, and reenlisted each subsequent year until he was rejected by the examining surgeon in 1895; that on his first enlistment he was reported physically sound; that his last enlistment was on August 22, 1894, for a term expiring July 31, 1895; that he was then reported not physically sound, but fit for duty, his physical defects being described by the examining surgeon as "slight varicocele and congenital deformity of head of sternum;" that upon reexamination July 22, 1895, he was reported "not fit for duty for the following reasons: He has a mitral insufficiency;" and that his application for reenlistment for the year beginning August 1, 1895, was rejected for the reason that he was physically disqualified for duty in the Life-Saving Service.

In conformity with law, the stations on the Atlantic coast are closed from June 1 to July 31 every year. During this period the surfmen are permitted to return to their homes, but they continue in the service and are subject to call, by signal or otherwise, for services at any shipwreck or to assist any vessel in distress, or to rescue or assist in rescuing any person from drowning. They are also subject during this period to the regulations and discipline of the service.

It also appears that notwithstanding his rejection in July, 1895, on October 24, 1895, he again applied for permission to reenlist; stated that he was in every way physically qualified for the service, and furnished certificates from several regular practicing physicians to the effect that, although he had a slight affection of the heart, he was, nevertheless, able-bodied and fit to perform duty. But upon a reference of the question to the Supervising Surgeon-General of the Marine-Hospital Service, he advised that the claimant was not a proper person for reenlistment, inasmuch as "the heart lesion is of such a character that it may at any time incapacitate him for active duty."

Having been finally rejected, the claimant on February 14, 1896, made application for the benefit provided by section 7 of the act of May 4, 1882, *supra*, which is as follows:

That if any keeper or member of a crew of a life-saving or lifeboat station shall be so disabled by reason of any wound or injury received or disease contracted in the Life-Saving Service in the line of duty as to unfit him for the performance of duty, such disability to be determined in such manner as shall be prescribed in the regulations of the service, he shall be continued on the rolls of the service and entitled to receive his full pay during the continuance of such disability, not to exceed the period of one year. \* \* \*

In requesting a revision of this claim the Secretary of the Treasury also states that—

It does not distinctly appear that the disability in this case was the result of the performance of duty or incident to it, and the question arises whether the benefits

under the law extend to all persons disabled by reason of injury received or disease contracted while in the service, or are restricted to those persons whose disability is consequent upon or incident to the performance of duty in the service.

The purpose of the statute was to encourage men to enlist in this perilous service by securing to them a continuance of their wages when stricken down in the line of duty, either by wounds or disease, by carrying them on the pay rolls during a limited time of disability, instead of discharging them from the service; therefore the statute should be construed liberally. I think no meritorious case, the facts of which bring it fairly within the terms of the statute, should be excluded from its benefits.

The language of the statute providing for disability arising from disease is "disease contracted in the Life-Saving Service in the line of duty."

The benefit of the act is not restricted to cases in which the disease is a necessary consequence of the duties of the service. If the disease is contracted while the keeper or surfman is "in the service and in the line of duty," and disables him from the performance of his present duties as such surfman, though it may not be consequent upon the performance of duty, it comes within the terms of the statute. It would frequently be extremely difficult and sometimes impossible to determine whether a disease was a necessary consequence of the performance of duty, and I think it is wise that the statute has not placed such a restriction upon the benefit which it provides.

But the benefits provided by the statute are restricted to cases in which the disease is contracted while the keeper or surfman is not only in the service, but also "in the line of duty," and for such disease or injury as unfits him for duty at the time. This restriction would, I think, apply to cases in which the disease was contracted in consequence of the vicious habits of the disabled person, and possibly to other cases which it is unnecessary now to consider. But I am of the opinion that a keeper or surfman in the service is "in the line of duty," not only while in the actual performance of duty required of him, but while awaiting orders during the period when the stations are closed, unless engaged in some unlawful or other disqualifying act.

The case now under consideration, however, in my judgment, presents another and more serious question than either of the questions so far considered.

The term of the last enlistment of this surfman expired on the 31st day of July, 1895. He was reexamined for reenlistment on July 22, 1895, but was found not fit for duty, and was not reenlisted for the ensuing year. His connection with the Life-Saving Service fully expired on the 31st day of July, 1895, since which period he has in no wise been connected with this branch of the service or been upon its pay rolls.

This application to be continued upon the pay rolls and to receive the benefits provided for under section 7 of the said act of May 4, 1882, was not filed by the claimant until February 14, 1896, nearly seven months after he finally quit the Life-Saving Service.

If it can be properly entertained and allowed now under the terms of this statute, being filed nearly seven months after his connection with the service had fully ceased, it would be equally allowable if filed seven years after he had ceased to be connected with the service.

I do not think it was the intention of Congress in the enactment of section 7 of the act (*supra*) to provide in any manner a civil pension

list, but that it did intend, as clearly therein expressed, to carry a surfman, keeper, or member of the crew of the life-saving or life-boat station upon the pay rolls if, either by wounds, injury, or disease, he became unfitted and disabled thereby from performing his present duties as such.

While the statute is beneficial and humane, and should therefore receive a liberal and just construction, yet in order to receive its benefits an applicant must fairly come within the class of persons for whom the benefit is provided.

The statute provides a benefit for members of the Life-Saving Service, not for the persons who have been members of the service. It does not provide for the restoring of a person to the pay rolls, but for continuing a disabled employee temporarily upon the rolls with full pay, in order that when recovered he may reengage in the duties of the service.

It is entirely fair to presume that in the great majority of cases where, either by disease, injury, or wounds, an employee of this service—one requiring the most active exertion of its members—is so far disabled as to unfit him for the performance of his duties (and if not so disabled he is not within the class provided for by this statute), he would certainly be aware of such disability.

It would certainly only be in rare instances that a person who knows from the very terms of the law and his contract that, when disabled from performing duties which require great manual exertion, he would be carried on the rolls with full pay during the time of such disability under the limitations of the statute, such person would from the very nature of things be not fully aware of such disability and be prepared to take present advantage of the benefits of the statute.

Take this case to illustrate my meaning. It is not the disability from which Mr. Adkins was suffering in the month of August, 1895, and the months following this covered by his application, for which the Government by this statute agrees to pay him wages by keeping him upon the pay rolls, unless this disability commenced while he was in the service and is a continuance thereof.

This application does not cover a day of the time in which this applicant was a member of the life-saving crew.

To grant this application would be to grant a temporary pension to the claimant, a thing entirely foreign to the intention of Congress in the passage of the act, and open the doors to the unnecessary uncertainty of medical evidence as demonstrated in this case, for we have the claimant here claiming as late as October, 1895, to be in such a state of good health as would justify him in attaching himself to this service, which is not only hazardous to life and limb, but requires great physical strength and endurance, and this contention supported by the affidavits of reputable medical men.

The regulations made to carry out and enforce this section of the law provide for monthly examinations of the condition of persons being carried on the rolls under its provisions, not contemplating even the possibility of applications for the benefit of this statute long after the applicant ceases to be a member of the crew.

In order that no possible injustice may be done members of this service by this construction of the statute, I beg leave to suggest to the chief of the Life-Saving Service that in future annual enlistments of these men he insert in the contract a clause that they be carried on

the rolls of the service without duty or pay for the period of thirty days, or such period as he may deem proper after the expiration of their term of enlistment, for the purpose, and only for the purpose, of making application for the benefit of the provisions of said section 7.

For the reasons above set out the action of the Auditor in making the allowance to the claimant above set out is disapproved, and on this revision such allowance is now disallowed.

R. J. TRACEWELL,  
*Comptroller.*

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TREASURY DEPARTMENT,  
OFFICE OF AUDITOR FOR THE TREASURY DEPARTMENT,  
*Washington, December 17, 1900.*

SIR: In response to your request to be furnished with a list of applicants for the benefits accruing under the provisions of section 7 of the act of May 4, 1882, whose claims have been rejected and disallowed under the decision of the Comptroller of the Treasury in the case of Warren Adkins, formerly a surfman in the Life-Saving Service, you are informed that the following is a list of applicants:

Warren Adkins.	John T. Dewees.	Reuben R. Hopkins.
Robert B. Andrews.	Kelton E. Fowle.	Alfred Olander.
B. W. Barnes.	Edward J. Graham.	Thomas Scanlon.
Levi P. Casto.	Lorenzo H. Gray.	Chas. A. Seaman.
J. H. Crowell.	Wm. S. Hooker.	Adelbert Soper.
S. T. Cahoon.	Thos. J. Hudson.	Thos. Shinn.

Respectfully,

W. E. ANDREWS, *Auditor.*

Hon. H. A. TAYLOR,  
*Assistant Secretary of the Treasury.*

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